



WILLIAM T FUJIOKA  
Chief Executive Officer

## County of Los Angeles CHIEF EXECUTIVE OFFICE

Kenneth Hahn Hall of Administration  
500 West Temple Street, Room 713, Los Angeles, California 90012  
(213) 974-1101  
<http://ceo.lacounty.gov>

October 16, 2012

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, CA 90012

Dear Supervisors:

### **MILITARY LEAVE (ALL SUPERVISORIAL DISTRICTS) (3 VOTES)**

#### **SUBJECT**

Recommendation to make adjustments to the paid military leave policy applicable to County employees who are military reservists.

#### **IT IS RECOMMENDED THAT THE BOARD:**

1. Approve the suspension of the existing 720-day limit on County-provided paid military leave benefits through calendar year 2015, and instruct the Chief Executive Officer to monitor the actual usage of this benefit and return to the Board with a report and appropriate recommendations by July 1, 2015;
2. Approve other adjustments in the County's military leave program, as set forth in the accompanying ordinance, that (a) modify the calculation of County-provided paid military leave benefits to ensure no loss of regular income on the part of military reservists and members of the National Guard (hereinafter referred to as "reservists") who are called into active military duty, and (b) modify the eligibility requirements for designated County-provided death and disability benefits to ensure such benefits cover reservists who are disabled or killed as a consequence of active military duty.
3. Approve the resolution set forth in Attachment A implementing Section 31720.4 of the California Government Code which, for Los Angeles County only, extends non-service-connected disability retirement benefits and pre-retirement death

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benefits to any reservist who (a) is covered by one of the County's contributory retirement plans, (b) is permanently disabled or killed as a direct consequence of active military service, and (c) has not completed five years of County service as otherwise required for receipt of these benefits.

4. In accordance with Section 395.03 of the California Military and Veterans Code, approve the resolution set forth in Attachment B authorizing up to 30 days per year of paid military leave, calculated in accordance with Sections 395.01 and 395.02 of said Code, for reservists who serve continuous periods of active military duty of more than one year.
5. Approve the establishment of a Countywide Military Leave Coordinator.
6. Instruct the Auditor-Controller to make the payroll systems changes necessary to implement these recommendations and, with the assistance of the Chief Executive Officer, issue necessary instructions to Departmental personnel and payroll administration staff.

#### **PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

On July 31, 2012, on motion of Supervisor Knabe, the Board directed the Chief Executive Officer to review the County's current military policy and return to the Board with appropriate recommendations. Pending receipt of the Chief Executive Officer's report, the Board approved a temporary suspension of the current 720-day limit on County-provided paid military leave. The information and recommendations set out in this letter constitute the Chief Executive Officer's report.

#### **Background**

Military leave benefits for County employees are governed by a combination of State law and County ordinance. Under the California Military and Veterans Code, all public employers in California must provide eligible employees with paid military leave during the first 30 calendar days of any period of active military service. An "eligible employee" for this purpose is any employee who is a reservist and who is ordered into active military duty after completing at least one year of service with his or her public employer (and prior military service may be counted for this purpose). This compensation is in addition to the pay an employee otherwise receives from the military. The 30 days of pay covers annual training and certain other types of routine active military service for reservists, and it also covers the first 30 days of longer term deployments.

The Board has taken action at various points in the past to augment the state law by providing additional military leave benefits to County employees ordered into active military service. In 1991, the Board approved additional military leave for reservists activated in connection with the Iraq-Kuwait crisis. This benefit provided the affected employees with compensation equal to the difference, if any, between an employee's regular County salary and his or her military pay for up to 360 days per activation. This benefit is commonly referred to as "military offset pay." In 1997 and 1999, similar benefits were established in connection with the crises in Bosnia and Yugoslavia, respectively. These benefits have since been repealed or have otherwise become inoperative.

On September 25, 2001, following the 9/11 attacks, military offset pay of up to 360 days was established for reservists activated in connection with the war on terrorism. That benefit was increased to 720 days on September 24, 2002 and remains operative at that level today.

#### **How the 720-Day Benefit Works**

Military offset pay is designed to supplement the difference between an individual's military pay and his or her County pay in those instances where the County pay is higher (roughly 70 percent of the cases). The benefit is calculated by subtracting (i.e., offsetting) the value of an employee's military pay from the County salary the employee would have otherwise received had he or she remained actively at work. The benefit starts after the aforementioned state-mandated 30-day benefit has been exhausted, unless an employee fails to qualify for the state-mandated benefit for lack of meeting the one-year service requirement. In that event, the County benefit begins with the first day of active military service.

The current County benefit terminates when the active military duty terminates, or after 720 consecutive calendar days of active military duty, whichever occurs first. The 720-day limit applies to each continuous period of active military duty. Therefore, an employee who is activated more than once will have the 720-day clock restarted with each activation. Any employee who receives military offset pay must return to active County service within certain timeframes set out in the federal Uniformed Service Employment and Reemployment Rights Act of 1994 (USERRA), unless precluded from returning due to disability or death. Otherwise, the military offset pay is deemed a loan that must be repaid to the County at a rate of interest that is 0.5 percent higher than the rate of interest earned by the County Treasury Pool at the time the repayment begins.

Employees who receive the state-mandated 30-day benefit and/or County provided military offset pay are considered to be in active County service during the period of active military duty. This keeps the County-sponsored employee benefits to which they

are otherwise entitled intact both for themselves and their families. For example, reservists who are full-time permanent employees may continue to earn Los Angeles County Employees Retirement Association (LACERA) retirement service credit while on active military duty, and they may continue to receive County contributions to the cafeteria benefit plan in which they participate. This is true even where an employee's military pay is greater than his or her County salary resulting in no military offset pay. In those situations, the employees or their families may make arrangements to be billed, if necessary, for any required employee contributions to LACERA or other County-sponsored benefit programs.

The Department of Human Resources produces a quarterly report that is posted on the Los Angeles County Board Correspondence website and that shows the total number of reservists by County Department, and the total number currently activated. The last four reports show an average number of total reservists of approximately 675 in 25 different County Departments. An average of 75 reservists have been activated at any given point in time during this twelve-month period.

Information on the frequency and duration of reservist activations is not currently captured in the aforementioned reports, but we will be working with the Department of Human Resources to add that information in the future. In the meantime, we estimate that roughly half of the reservists who have been activated have been activated for less than 12 months, and approximately 90 percent have been activated for less than 18 months. In the past three years, there have been approximately 14 instances where a reservist has remained on active military duty for more than 720 consecutive days.

### **Recommended Suspension of the 720-Day Limit**

We are recommending that the Board's temporary suspension of the 720-day limit be extended through calendar year 2015. We do not believe a finite limit on each individual activation, even a seemingly high limit of 720 days, is appropriate at this time given the demands being placed on military reservists. However, we are further recommending that the Chief Executive Officer be instructed to track the experience of the military leave program and return to the Board by October 1, 2015 with appropriate recommendations regarding the need for any further changes in this policy.

Although the current 720-day limit has been sufficient to cover nearly all military activations, it does not fully protect those reservists who give the most in terms of continuous deployment. And, because the limit is a limit on each activation, not total active duty, it may create unequal treatment within the reservist population based purely on the timing of any given activation. For example, a reservist who is activated for one continuous period spanning more than 720 days is subject to the limit. But, a reservist who is activated more than once for the same total number of days (in the aggregate)

may not be subject to the limit as long as no single stretch of active duty exceeds 720 days.

The suspension of the limit would also allow for additional leave, where necessary, for medical care for injured reservists. This is especially important where an injury occurs toward the end of what was already a long leave. We understand it is common practice for the military to retain an injured reservist on active military duty while he or she is receiving critical medical care – particularly during the initial phases of that care. It would, therefore, be appropriate, to adopt a military leave policy that recognizes and accommodates these situations.

It should also be noted that the recommended suspension of the 720-day limit would pose little cost based on experience to date, and would establish a policy that is consistent with the policies adopted by a number of large southern California public employers. This includes Orange County and San Diego County which both provide a similar military offset pay benefit for the full period of active military duty. So do the Cities of Los Angeles, Long Beach, Torrance, and Anaheim.

#### **Adoption of Section 31720.4 of the Government Code**

County retirement benefits are governed by the County Employees Retirement Law of 1937 (CERL) which is codified in Title 3 of the California Government Code beginning with Section 31450. For employees covered by any of the County's contributory retirement plans, CERL has long provided for disability and pre-retirement death benefits for both work related and non-work related disabilities and deaths. (The contributory retirement plans are the plans commonly referred to as "General Member Plans A, B, C, and D" and "Safety Member Plans A and B.") However, in the case of non-work related disabilities and deaths, including disabilities and deaths caused by military service, each of these plans requires that an eligible employee must have completed at least five years of County retirement service credit.

Section 31720.4 is a local option provision within CERL that, if adopted by a majority vote of the Board, would waive the five-year service requirement for nonservice-connected disability and survivor benefits for reservists who are disabled or killed as a direct consequence of active military duty. It would not change the fundamental calculation of these benefits which are based, in part, on an individual's length of County service, age, and County pay, but it would prevent the complete absence of coverage for military related disabilities and deaths affecting reservists with less than five years of County service. Section 31720.4 applies to Los Angeles County only.

Section 31720.4 was amended into the Government Code last year as a result of the passage of AB 1739 Lieu (Chapter 83, Statutes of 2010). This bill was sponsored by the Los Angeles County Sheriff's Department and followed the Board's adoption of a legislative policy to allow any County employee who becomes permanently incapacitated as a direct consequence of an injury or disease arising out of active military service to be eligible for retirement for nonservice-connected disability. This policy was adopted on November 18, 2010.

We are recommending that Section 31720.4 be made operative and that similar changes be implemented by ordinance for reservists covered by the noncontributory retirement plan known as "Plan E." The disability and death benefits under Plan E are established by local ordinance (not CERL), and the changes we are recommending are provided for in the accompanying ordinance. Further detail on Section 31720.4 and the related Plan E changes is contained in Attachment C.

#### **Establishment of a Countywide Military Leave Coordinator**

The Board's action on July 31, 2012 also provided for a report back on efforts to develop a Countywide Military Leave Coordinator to be responsible for ensuring a fair, consistent, and equitable policy on the handling of the personnel needs for reservists. We are recommending that a Military Leave Coordinator position be established and that it serves as liaison with the affected Departmental Human Resources staff on all matters relating to the personnel policies affecting reservists. The Military Leave Coordinator would have overall responsibility for ensuring that Departmental Human Resources staff are properly trained and up-to-date on the State and Federal law pertaining to reservists' employment rights, as well as all related County policy, and it would establish the processes necessary to accurately track and report Countywide military leave usage. In addition, the Military Leave Coordinator, in conjunction with the Chief Executive Office and Auditor-Controller, would issue necessary guidance to County Departments regarding the calculation and administration of paid military leave benefits.

The Military Leave Coordinator function would complement the reservist support activities already existent in many County Departments. The Sheriff's Department, for example, has the highest number of military reservists at approximately 40% of the Countywide total. The Sheriff has a designated Military Activation Committee Liaison Deputy and a long history of fully supporting the needs of the Department's reservists, including any human resources concerns. In 2004, the Secretary of Defense awarded the Sheriff's Department the Employer Support Freedom Award. This is the highest recognition given by the U.S. Government for employer support of reservists. The Sheriff's Department clearly has a demonstrated capability in effectively dealing with the

needs of reservists. It would be the goal of the Countywide Military Leave Coordinator to promote the same capability in all affected Departments.

The creation of the Countywide Military Leave Coordinator position will require one additional full-time permanent position. The level of the position, the duties and responsibilities and the department to which the position may be assigned will be determined at a later date. Funding and allocation for this position will be provided for in the FY 2013-14 Recommended Budget.

### **Other Recommended Changes**

We are also recommending the following additional changes which are provided for in the accompanying ordinance and explained more fully in Attachment C:

- Modify the calculation of military offset pay by restating the definitions of “County pay” and “military pay” that are used for this purpose. The proposed definition of County pay would better capture the earnings a reservist would have actually received during a period of active military duty, and the proposed definition of military pay and related changes in payroll procedures would simplify the payroll administration process and reduce the potential for payroll error.
- In accordance with Section 395.03 of the California Military and Veterans Code, augment the State-mandated military leave benefit that applies during the first 30 days of active military duty to ensure that this benefit is received each year in any case where a reservist is activated continuously for more than one year. This action requires adoption of the resolution set forth in Attachment B and the accompanying ordinance.
- For any reservist who is permanently disabled or killed as a consequence of active military duty and who is otherwise covered by the County-sponsored Long-Term Disability (LTD) Plan (including the LTD Plan applicable to employees who are participants in the cafeteria plan known as “MegaFlex”), waive the following:
  - The existing five-year service requirement that otherwise applies to disabilities and deaths that are nonservice-connected. This change parallels the recommended adoption of Section 31720.4 of the Government Code and, as noted above, is particularly important for reservists in Plan E.

- The “act of war” exclusion. This would potentially affect not only the disability and death benefits provided through these plans, but the health insurance benefits as well. We are further recommending the elimination of the same exclusion in the Short-Term Disability (STD) Plan and Survivor Income Benefit (SIB) Plan applicable to participants in MegaFlex.
- Existing deadlines for LTD claims submissions in favor of rules and process that provide more flexibility for injured reservists.
- For any reservist who is permanently disabled or killed as a consequence of active military duty and who is a participant in a contributory retirement plan, waive the five-year service credit requirement otherwise required for participation in the County-sponsored LACERA administered retiree health insurance program, and waive the ten-year service credit requirement otherwise required for the minimum County-provided retiree health insurance subsidy.

### **Implementation of Strategic Plan Goals**

The recommended actions are consistent with the principles of the Countywide Strategic Plan by promoting the well-being of County employees who are reservists.

### **FISCAL IMPACT/FINANCING**

Future costs will depend on future experience with regard to reservist activations. Based on past experience, however, approval of these recommendations will generate on-going expenditures estimated at \$250,000 per annum (all funds). These costs result from the recommended suspension of the 720-day limit on military offset pay and the proposed technical changes in the calculation of that benefit, and the augmentation of State-mandated military leave benefits for reservists who are activated for continuous periods of more than one year. The costs of the adoption of Section 31720.4 of the Government Code and the recommended changes to the STD, LTD, and SIB Plans and the retiree health insurance program are indeterminate, but presumably minor based on experience to date (and very possibly zero).

### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

The accompanying ordinance implements the recommendations contained herein and deletes certain obsolete military leave provisions. It also restates the existing provisions to clarify that those provisions apply to all active military service on the part of reservists regardless of the specific nature of that service. This is consistent with the manner in which these benefits have been administered since 2001. As a part of this change, the ordinance removes the existing reference to active duty “as a result of the war on

terrorism" in favor of a more general reference to active military duty (of any kind). This better supports the broad application of these provisions.

USERRA is the federal law that protects the civilian employment and reemployment rights of military personnel, including reservists, and prohibits employer discrimination based on military service or obligation. Basic job protections include, among other things, the right to a leave of absence and timely reinstatement upon release from active military service, preservation of an employee's seniority as if there was no employment absence, and employee opportunity to makeup pension payments to receive credit for the period of the absence. The County's current military leave policy/benefits meet or exceed each of the employment and reemployment rights required by USERRA.

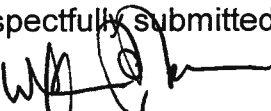
The Coalition of County Unions and Service Employees International Union (SEIU), Local 721 have been informed of these changes and have expressed no opposition.

County Counsel has approved as to form the accompanying ordinance.

**IMPACT ON CURRENT SERVICES (OR PROJECTS)**

None.

Respectfully submitted,



WILLIAM T FUJIOKA  
Chief Executive Officer

WTF:BC:JA:MTK

WGL:LSB:mst

Attachments (3)

c: All Department Heads  
Coalition of County Unions  
SEIU, Local 721  
Guild for Professional Pharmacists  
Environmental Health Specialists  
Public Defender Investigators  
Professional Peace Officers Association  
Union of American Physicians and Dentists

**ATTACHMENT A**

**RESOLUTION OF THE BOARD OF SUPERVISORS  
OF THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA IMPLEMENTING  
SECTION 31720.4 OF THE CALIFORNIA GOVERNMENT CODE**

WHEREAS, retirement benefits for employees of the County of Los Angeles are governed by the County Employees Retirement Law of 1937 commencing with Section 31450 of the California Government Code; and

WHEREAS, said County Employees Retirement Law of 1937 provides, among other things, for benefits commonly known as "disability retirement benefits" and "pre-retirement survivor benefits" for eligible employees and eligible survivors of eligible employees who become permanently incapacitated for the performance of duty, or who die, while in County service; and

WHEREAS, in any case where an employee's disability or death is due to reasons not arising from County employment, said disability and pre-retirement survivor benefits are limited to employees who have completed at least five years of County retirement service credit; and

WHEREAS, the Board of Supervisors is authorized by Section 31720.4 of the California Government Code to waive said five-year service requirement in any case where an otherwise eligible employee is permanently incapacitated for the performance of duty, or killed, as a direct consequence and result of injury or disease arising out of, and in the course of, active military service while on military leave of absence from the County; and

WHEREAS, the Board of Supervisors desires to implement Section 31720.4 of the California Government Code.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Los Angeles that Section 31720.4 of the Government Code shall become operative in the County of Los Angeles.


The foregoing resolution was adopted by the Board of Supervisors of the County of Los Angeles at the regular meeting on the \_\_\_\_ day of \_\_\_\_\_ 2012.

SACHI A. HAMAI  
Executive Officer  
Board of Supervisors

By \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:

JOHN F. KRATTLI  
County Counsel

By 

**ATTACHMENT B**

**RESOLUTION OF THE BOARD OF SUPERVISORS  
OF THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA  
REGARDING PAID MILITARY LEAVE FOR COUNTY EMPLOYEES**

WHEREAS, Sections 395.01 and 395.02 of the California Military and Veterans Code provide that any public employee in California who is on a military leave of absence from a public employer and who has been in the service of that employer for at least one year immediately prior to such leave of absence shall receive his or her pay as a public employee during the first 30 calendar days of that leave, provided that not more than 30 calendar days of such paid leave is received within any fiscal year; and

WHEREAS, Section 395.03 of said California Military and Veterans Code provides, among other things, that the provisions in Sections 395.01 and 395.02 that limit the paid leave authorized by those sections to the first 30 calendar days of any military leave may be exceeded by a public employer if authorized by resolution of the governing body of the public employer; and

WHEREAS, the Board of Supervisors, as the governing body of the County of Los Angeles, desires to provide any County employee who is on a continuous military leave of absence lasting for more than one year with up to 30 calendar days of paid leave otherwise authorized by said Sections 395.01 and 395.02 of said California Military and Veterans Code during each year of such absence.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Los Angeles that, in accordance with Section 395.03 of the California Military and Veterans Code, any employee who is on a continuous military leave of absence of

one year or more shall, commencing with the second continuous year of such leave, be entitled to up to 30 calendar days per year of paid military leave calculated in the manner otherwise authorized by said Sections 395.01 and 395.02. Such compensation shall be in addition to the paid leave authorized by said Sections 395.01 and 395.02 of the California Military and Veterans Code and shall be in lieu of any paid military leave that may otherwise be authorized by the County Code for the same period of time.

The foregoing resolution was adopted by the Board of Supervisors of the County of Los Angeles at the regular meeting on the \_\_\_\_ day of \_\_\_\_\_ 2012.

SACHI A. HAMAI  
Executive Officer  
Board of Supervisors

By \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:

JOHN F. KRATTLI  
County Counsel

By 

## ADDITIONAL RECOMMENDATIONS REGARDING MILITARY LEAVE

1. **Issue:** Definition of "County pay" for purposes of calculating military offset pay.

**Current Practice:** Military offset pay equals the difference between County pay and military pay (when the military pay is less). Current practice provides that County pay includes a reservist's regular monthly salary, but not necessarily everything a reservist would have earned during a military leave absence based on the reservist's last held position and established work schedule. Regular monthly salary may not include hourly bonuses or other pay differentials that are normally conditioned on an employee being physically on the job. For example, regular monthly salary does not include the night shift bonus a nurse might receive. Neither does it include bilingual pay after 60 days of leave, working out of class pay, and the overtime pay a 56-hour Firefighter normally receives as a part of his or her regular work schedule. To the extent these items are excluded, a reservist may suffer a loss of income as a consequence of active military duty.

**Proposed Change:** County pay will be defined as all pay a reservist would have otherwise received during a period of active military duty based on (a) the position, assignment, and regular work schedule applicable to the employee immediately prior to activation, and (b) the assumption the employee would have remained actively at work in the same position, assignment, and work schedule during the activation period. County pay will include any bonus to which an individual would have clearly been entitled, but for the military duty. It may also include overtime pay if the overtime is part of an employee's regular work schedule established at least 60 days prior to activation. Overtime that is unplanned or that otherwise does not meet this criteria will not be included.

Notwithstanding the foregoing, if a reservist or his or her Departmental management can provide information that shows, conclusively, that the reservist's County pay during a period of military activation would have been higher than the pay attributable to the reservist's last held position and assignment, such as the higher pay that would result from a promotional appointment occurring post-activation, the higher pay number will be used for this purpose. The Chief Executive Officer will issue necessary guidance on the administration of this aspect of the proposed policy.

**Comment:** This change is intended to recognize all forms of County pay that clearly "would have" been earned in the absence of military activation.

2. **Issue:** Definition of "military pay."

**Current Practice:** Military pay consists of a number of components. We estimate that 80 percent or more of the total military pay received by reservists consists of three components known as "Basic Military Pay," "Basic Allowance for Housing," and "Subsistence Pay." Basic Military Pay is essentially a base salary and a function of an individual's military rank and length of military service. The Basic Allowance for Housing is additional compensation intended to pay for an employee's civilian "home" residence (not housing at the point of deployment). It is essentially an adjunct to Basic Military Pay and is a function of rank, zip code, and number of dependents. Subsistence Pay is additional remuneration to cover the costs of meals purchased by reservists, including meals provided by the military and charged to the reservists. This is effectively expense reimbursement, not "pay" in the normal sense of the word.

The remaining 20 percent or less of military pay consists of other special allowances and incentives that may be linked to a reservist's specific assignment or circumstances, and that may be subject to change post-activation. This could include, for example, "Hostile Fire/Imminent Danger Pay," "Sea Pay," "Flight Pay," or a number of other special pay allowances. Current practice includes all of these items in the definition of military pay. Nothing is excluded as long as it is associated with the active military duty in question.

Current practice also requires that proof of military pay be provided monthly through submission of military pay stubs known as "Leave Earnings Statements." This can be a difficult, sometimes impossible, requirement for reservists serving in remote or hostile locations. It also complicates payroll administration as the required documentation is often submitted late and, out of necessity, payroll estimates may be made based on the last known information. This can lead to errors requiring follow-up correction, and the disruption and frustration that naturally results from payroll errors. All in all, this process is less than ideal.

**Proposed Change:** Military pay will be determined as follows:

- (a) Military pay will be defined as the sum of Basic Military Pay and Basic Allowance for Housing. Nothing else will be included. The amounts attributable to each of these components will be the amounts payable to each affected reservist at the outset of an activation based on the reservist's rank and length of military service, and other determining factors at that point in time. No adjustments will be made in these amounts post-activation unless the adjustments are necessary to reflect general across-the-board military pay adjustments announced by the Department of Defense.
- (b) The Chief Executive Office will take responsibility for monitoring information disseminated by the Department of Defense, determining when general across-the-board adjustments in the above military pay amounts are to be made, and issuing all necessary guidance to County Departments regarding

those adjustments. Absent instructions from the Chief Executive Office, no adjustments in these amounts will be made once a reservist has been activated.

- (c) Reservists will be required to show proof necessary to confirm the rates associated with Basic Military Pay and the Basic Allowance for Housing prior to activation, but not subsequent to activation. No proof of military pay, per se, will be required subsequent to activation.
- (d) Although no proof of military pay will be required subsequent to activation, it may be provided at the discretion of the reservist if it would result in a higher military offset pay amount than the amount otherwise produced by the proposed policy outlined herein.
- (e) Military pay may include certain additional pay for physicians, nurses, and other health care professionals. For these individuals, military pay figures used in the military pay offset calculation will include such additional pay on the condition it is paid across-the-board to all similarly situated reservists in those occupations.

**Comment:** This change will eliminate many of the payroll errors that are unavoidable under the current policy. The proposal identifies a military offset pay amount that can be effectively tracked by the County and that does not place unreasonable demands for documentation on the affected reservists. The proposed policy captures most, if not all, of the military pay a reservist receives, and it allows the military the latitude to pay additional incentives to reservists, as it deems appropriate, without an offsetting reduction in a reservist's overall income.

3. **Issue:** Extension of State-mandated paid military leave for long-term activations.

**Current Practice:** Sections 395.01 and 395.02 of the California Military Veterans Code require that eligible reservists receive fully paid military leave during the first 30 calendar days of any period of active military service, but not more than 30 days of such leave within any fiscal year. As noted in the cover letter, the County pay received under this authority is in addition to any pay a reservist receives from the military (i.e., it is not offset). However, the fact that this benefit is limited to "the first 30 days" of any given period of activation creates an inequity between those reservists who experience multiple activations in successive years and those who experience one continuous activation lasting for more than one year. In the first case, the reservists receive up to 30 days of State-mandated paid leave each year and, in the second case, the reservists receive only one 30-day allotment of such leave.

Section 395.03 of the California Military and Veterans Code also provides that the above 30-day per activation limitation may be exceeded in any given public entity if authorized by the local governing legislative body. No such authorization has been granted heretofore by the Board.

**Proposal:** Pursuant to Section 395.03 of the Military and Veterans Code, authorize up to 30 days of additional "State-mandated" paid military leave per year commencing in the second year of activation for those reservists who are activated on a continuous basis for more than one year. Such leave is to be calculated in the same manner as the leave otherwise authorized by Sections 395.01 and 395.02 of the Military and Veterans Code and, for each day paid, shall be in lieu of the military offset pay to which such reservists are otherwise entitled under the County Code.

**Comment:** The inequity created by "the first 30 days" limitation in Sections 395.01 and 395.02 of the California Military and Veterans Code is not unlike the inequity currently created by the 720-day limit on military offset pay (as discussed in the cover letter). In both cases, the limitations may adversely impact those reservists who are activated for the longest periods. This change would eliminate the problem as it relates to the State-mandated benefit.

4. **Issue:** Implementation of Section 31720.4 of the Government Code.

**Current Practice:** As noted in the cover letter, nonservice-connected disability and death benefits are provided under the contributory retirement plans, but no employee covered by those plans can be eligible unless he or she has completed at least five years of retirement service credit. There are no exceptions.

**Proposed Change:** Adopt Section 31720.4 of the Government Code which creates an exception for reservists who are permanently disabled or killed as a direct consequence of active military duty.

**Comment:** Nonservice-connected disability retirement benefits generally provide for a minimum pension benefit that, in most instances, equals one-third of the salary figure used for pension calculation purposes. If an individual has earned a greater benefit by virtue of age and service, he or she is entitled to that benefit in lieu of the minimum benefit. For reservists with less than five years of service, the one-third minimum would apply in every case. Therefore, adoption of Section 31720.4 would effectively extend the minimum one-third benefit to that group of reservists, but only where a disability is caused by active military service.

The nonservice-connected pre-retirement death benefits provided under the contributory retirement plans generally provide for a lifetime monthly benefit equal to 65 percent of the disability retirement benefit the decedent received (or would have received had the decedent lived in a disabled state). (Optional forms of this benefit are also available through the Los Angeles County Employees Retirement Association (LACERA), but the 65 percent benefit is the standard "unmodified" benefit). Therefore, for an individual entitled to the minimum one-third disability benefit, the monthly death benefit would equal 65 percent of one-third, or approximately 22 percent of the earnings used for pension calculation purposes.

The five-year service requirement has been a part of the County Employees Retirement Law of 1937 (CERL) since its inception. This requirement is considered a necessary and appropriate means of protecting the County and the retirement system from excessive or unwarranted claims on the part of newly hired employees. With regard to reservists, however, we believe the case for adopting Section 31720.4 far outweighs any potential concerns over excessive claims. Specifically:

- (a) The risks associated with status as a reservist are determined by circumstances beyond the control of the reservist that have no direct connection to a reservist's County employment. We think it unlikely in the extreme that the adoption of Section 31720.4 would attract employees who set out to make inappropriate disability or death claims as a consequence of military service.
- (b) Based on experience, we cannot attach any cost to this change. Since 2001, there have been two disability cases and one death case involving reservists on active military duty. None of them had less than five years of service at the time of the injury or death. Therefore, this change, had it been in place for the last ten years, would have generated no additional cost.
- (c) Reservists with five or more years of County service receive these benefits now. Given the circumstances, we can see no policy-based reason to differentiate between the reservists who have five or more years of County service and those who do not. This change would level the benefit within the reservist group, and arguably make it more fair.

It should be noted that nonservice-connected disability retirement benefits are different from service-connected disability retirement benefits which apply exclusively to work related injuries and deaths. Service-connected disability retirement benefits involve a different benefit structure, different tax implications for the employee, and different eligibility criteria. Adoption of Section 31720.4 would have no effect on service-connected disability retirement benefits.

The terms of Section 31720.4 provide that it establishes no vested rights on the part of any employee who is not retired, and that the action to implement this provision may be reversed in the future should the Board choose to do so. A copy of Section 31720.4 is included as the Appendix to this Attachment C.

5. **Issue:** Elimination of the five-year service requirement under the Long-Term Disability (LTD) Plan.

**Current Practice:** For most County employees, the LTD Plan contains a five-year service requirement for nonservice-connected disabilities that was modeled after the above described CERL requirement. The LTD Plan generally provides for disability benefits equal to 60 percent of salary through age 65, or longer, depending on the severity of disability and an employee's age at the onset of

disability. The benefits are coordinated (i.e., offset dollar for dollar) by any other benefits that may be received for the same disability, including benefits that may be provided by CERL, by the workers compensation system, or by the military. The Plan also provides for pre-retirement survivor benefits equal to 55 percent of the disability benefit received by the decedent (or that would have been received had the decedent lived as an LTD beneficiary).

The County-sponsored Long-Term Disability (LTD) Plan was originally established in 1981 for members of Retirement Plan E. It is the sole source of County-sponsored disability and pre-retirement survivor benefits for the Plan E population, and was established as an alternative to the disability and death benefits otherwise provided by CERL. The LTD Plan takes an insurance approach to the provision of these benefits with its own standards for determining the existence of disability and its own claims administration process. The Plan is administered by the County, not LACERA.

In 1985, following the County's withdrawal from Social Security and resultant loss of Social Security Disability Benefit coverage for County employees, the LTD Plan was extended to all employees covered by General Member Retirement Plans A, B, C, and D, and to all non-represented employees covered by Safety Member Retirement Plans A and B. As with Plan E participants, LTD benefits for all of these individuals are offset by any other benefits received for the same disability. And, under the terms of the LTD Plan, contributory retirement plan members, and their survivors, who have been receiving LTD benefits for two years must make application to LACERA for retirement benefits as a condition of continued eligibility for LTD benefits. Any benefits received under CERL are then offset against any benefits otherwise payable under the LTD Plan.

Except in the case of certain MegaFlex participants (as explained below), the five-year service requirement for nonservice-connected disabilities continues to be an integral part of the LTD program.

The LTD Plan also contains a health insurance component that, with certain limitations, provides health insurance coverage to LTD beneficiaries who are not actively at work and not yet retired, and to their survivors. The program provides for a continuation of an individual's County-sponsored active employee health insurance coverage (including dependent coverage) with a core County subsidy equal to 75 percent of cost of that coverage. However, during the annual cafeteria plan benefit enrollment process, eligible employees who are not already receiving LTD benefits may opt for a 100 percent subsidy with the additional cost being paid by the employees through payroll deductions. This benefit does not apply to any LTD beneficiary who is otherwise eligible for LACERA retiree health insurance benefits and, it does not apply to any person who is precluded from receiving LTD benefits for any reason, including inability to meet the above described five-year service requirement.

In 1991, when the MegaFlex cafeteria benefit plan was established for designated non-represented employees, a separate version of the LTD Plan was established for the MegaFlex population. It is largely the same LTD Plan as described above, but divided up into optional parts that must be selected during the annual cafeteria plan benefit enrollment process. Depending on retirement plan membership and, in the case of Plan E, employee length of service, the LTD benefits these employees select are, in most cases, fully or partially paid for by the employees through payroll deductions. For example, employees in the contributory retirement plans may choose an LTD benefit of either 40 percent or 60 percent with no five-year service requirement, but must pay for the full cost of that benefit through payroll deductions.

MegaFlex employees covered by Plan E receive a noncontributory core LTD benefit of 40 percent after five years of service. This is provided at County expense. Plan E members who want a 60 percent benefit must elect and pay for the cost of the additional 20 percent benefit. Plan E members with less than five years of County service may also elect this coverage, but must pay for the entire 40 percent or 60 percent, as the case may be, through payroll deductions.

For MegaFlex participants, survivor benefits were separated from the LTD Plan and limited to Plan E members. They are delivered through a separate Survivor Income Benefit (SIB) Plan requiring employee contributions. There is no five-year service requirement in the SIB Plan.

**Proposed Change:** For the same reasons outlined above under Item 4, eliminate the five-year service requirement in the LTD Plans for reservists who are disabled within the meaning of the Plans or killed as a direct consequence of active military duty.

**Comment:** This is essentially the same change outlined under Item 4, but extended to the LTD Plan. The LTD Plan is established by local ordinance, not State law, and, therefore, is not affected by the adoption of Section 31720.4 of the Government Code. The proposed change would potentially affect all reservists eligible for the LTD Plan with less than five years of County service, but it would be especially important for Plan E members. As noted above, the LTD Plan is the sole source of County-sponsored disability, pre-retirement survivor benefits, and related health insurance benefits for participants in Plan E, and, depending on the circumstances, those benefits may be payable through age 65 or later.

The elimination of the five-year service requirement would potentially affect all of the benefits outlined above, but only for reservists with less than five years of service who are disabled or killed as a direct consequence of active military service. No one else would be affected. As with the recommended adoption of Section 31720.4, we cannot attach a cost estimate to this change. Over the past ten years, there have been no known cases of disabled or killed reservists who had less than five years of County service at the time of disability or death.

6. **Issue:** Elimination of the “act of war” exclusion in the LTD Plans and the MegaFlex Short-Term Disability (STD) Plan and SIB Plan.

**Current Practice:** The aforementioned LTD Plans contain a common exclusion for “acts of war, declared or undeclared.” This means that no benefits may be paid under these plans for disabilities or deaths caused by war. The same exclusion exists in the STD Plan and SIB Plan.

**Proposed Change:** Eliminate the act of war exclusion in each of these plans for reservists who are disabled within the meaning of the LTD and STD Plans, respectively, or who are killed as a direct consequence of active military duty.

**Comment:** It has already been noted that, for Plan E members, (a) the LTD Plans are a substitute for the disability and pre-retirement survivor benefits provided to employees covered by any of the County’s contributory retirement plans, and (b) the 1985 extension of the LTD Plans to participants in the contributory retirement plans was a change that resulted from the County’s withdrawal from Social Security. In this connection, it should be noted that there is no act of war exclusion for the disability or pre-retirement survivor benefits in the contributory retirement plans, and no act of war exclusion in the Social Security system. This change would, therefore, align the County’s LTD benefits with these other programs, but only with regard to reservists who are disabled or killed as a direct consequence of active military duty.

Along a similar vein, the STD Plan is essentially a substitute for the full-pay and part-pay sick leave benefits provided to the majority of County employees who are not covered by MegaFlex – and there is no act of war exclusion in the County’s sick leave program. This change would, therefore, align the STD Plan with the sick leave benefits provided to most County employees insofar as the act of war exclusion is concerned, but, again, only with regard to the aforementioned reservists.

Finally, the SIB Plan is an alternative form of term life insurance benefit that is available to Plan E members who are participants in MegaFlex. The SIB Plan is an alternative to the more traditional group universal life insurance benefits otherwise available to non-represented employees and the term life insurance benefits otherwise available to represented employees. And, there is no act of war exclusion in either the group universal life insurance or term life insurance programs. This change would eliminate this disparity as well for the affected reservists.

We can see no policy-based justification to maintain a double standard with regard to the act of war in these areas or, in the case of the Plan E population, to expose a limited segment of the reservist population (and their survivors) to what could be a complete loss of County-sponsored disability and death benefit coverage as a result of military service. Given that two reservists have been disabled and one killed as a consequence of active military duty in the last ten years, and given all of

the other uncertainties related to the future demands that will be placed on the County's reservists, it is not possible to accurately predict the costs associated with this change. Future costs would be indeterminate, but presumably very minor.

7. **Issue:** Retiree health insurance for disabled reservists with less than ten years of County service.

**Current Practice:** All County retirees are eligible to participate in the retiree health insurance program sponsored by the County and administered by LACERA. If Section 31720.4 of the Government Code is adopted, as recommended, retiree health insurance would also extend to disabled reservists and survivors of reservists receiving disability retirement benefits under authority of that section. Retirees who have completed at least 10 years of County retirement service credit are entitled to a subsidy from the County toward the cost of retiree health insurance coverage. With certain limitations, the subsidy equals 4 percent of the cost of the insurance for each year of County retirement service credit (i.e., 40 percent after ten years of service). Retirees with less than 10 years of service receive no subsidy.

**Proposed Change:** Extend the retiree health insurance subsidy otherwise applicable to a retiree with ten years of County retirement service credit to any reservist, and the eligible survivor(s) of any reservist, who (a) is permanently disabled or killed as a direct consequence of active military duty, and (b) retires as a consequence of such disability or dies prior to completing ten years of County retirement service credit.

**Comment:** This change would complement Recommendations 4, 5, and 6. It would primarily affect reservists in the contributory retirement plans as those reservists are dependent to a greater degree on the health insurance administered by LACERA. As noted above, contributory plan members, and their survivors, are precluded from receiving LTD benefits, including LTD health insurance benefits, for more than two years unless they make application for LACERA retirement benefits. And, they cannot receive LTD health insurance benefits if they are eligible for LACERA administered health insurance benefits. Plan E members, on the other hand, are eligible for LTD Health Insurance and the attendant 75 percent County subsidy for as long as the individual receives the LTD benefits (which may be to age 65 or later).

Recommendations 4, 5, and 6 are necessary to (a) better protect reservists and their families from the risks associated with military duty, and (b) bring more balance to the disability and death benefits provided across the County's tiered retirement structure. The benefits provided to Plan E members versus contributory retirement plan members are different, but, with these changes, none will allow for any reservist to be completely without coverage where disability or death results from military activation. This change serves the same objective with respect to retiree health insurance for those reservists in the contributory retirement plans who have less than ten years of County service.

We believe it is appropriate to extend this benefit option to the reservists in question, but we think it is unlikely it would ever be utilized. This is because alternative low cost health insurance coverage is also available to disabled veterans and, under certain conditions, eligible survivors of disabled or deceased reservists through the Federal Government. In contrast, LACERA coverage for a ten-year employee involves a 40 percent County subsidy and a 60 percent employee contribution. Although the access to health care providers may be different between the two systems, the 60 percent cost associated with the LACERA option would presumably steer many, if not all, of the affected individuals toward the Federal benefits. Given these circumstances and the experience over the past ten years, we cannot attach any estimated cost to this change.

8. **Issue:** Claims submission requirements under the LTD Plans.

**Current Practice:** The LTD Plans require that disability claims be submitted within one year from the first day of absence from work due to disability. No benefits can be paid for claims submitted after one year. This requirement is explicitly set out in the County Code. Claims submission deadlines also exist in the STD Plan, but the relevant County Code provisions allow the deadlines to be determined administratively by the Chief Executive Office.

**Proposed Change:** Amend the County Code to allow the Chief Executive Officer to administratively determine LTD claims submission deadlines for disabled reservists and to make accommodations, where appropriate. (Similar changes for reservists will be made for the STD Plan, but that change does not require Board action).

**Comment:** It may be impractical to impose a one-year deadline on reservists who may be out for longer than one year on military leave. The one-year rule was not written with active military duty in mind. More flexibility is needed.

SECTION 31720.4 OF THE CALIFORNIA GOVERNMENT CODE

**31720.4 Los Angeles County; members incapacitated as a result of active military service; retirement for nonservice-connected disability; benefit to spouse of member who dies as a result of active military service**

(a) Notwithstanding subdivision (b) of Section 31720, a member who becomes permanently incapacitated for the performance of duty with his or her employing county or district as a direct consequence and result of injury or disease arising out of, and in the course of, active military service while on military leave from the county or district, shall be retired for nonservice-connected disability regardless of age or years of service.

(b) Notwithstanding any provision to the contrary in Section 31781.3, the surviving spouse of a member who dies as a direct consequence and result of injury or disease arising out of, and in the course of, active military service while on military leave from his or her employing county or district, shall be entitled to the combined benefit under Section 31781.3 regardless of the member's years of service at the time of death.

(c) For the purposes of this section:

1) "Active military service" means full-time duty within a branch of the Armed Forces of the United States.

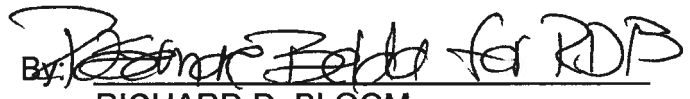
2) "Military leave" means an authorized leave of absence taken from a member's employing county or district as a result of a member being called to active military service because of his or her position as a reservist or member of the National Guard.

(d) This section shall apply only to the County of Los Angeles and shall not be operative with regard to the county, or a district within the county, until the board of supervisors of the county, or the governing body of the district, elects, by resolution adopted by a majority vote, to make this section operative. The adoption of a resolution making this section operative shall not create a vested right with respect to any member prior to the member's retirement or death. The board of supervisors or the governing body of the district may repeal or amend the resolution at any time, except to the extent that it would affect a member who is retired or is deceased at the time of the repeal or amendment.

## ANALYSIS

An ordinance amending Title 5 – Personnel and Title 6 – Salaries of the Los Angeles County Code, relating to the compensation of employees ordered into active military service.

JOHN F. KRATTLI  
County Counsel

By:   
RICHARD D. BLOOM  
Principal Deputy County Counsel  
Labor & Employment Division

RDB:pk  
Requested 09-25-12  
Revised 09-28-12

ORDINANCE NO. \_\_\_\_\_

An ordinance amending Title 5 - Personnel and Title 6 – Salaries of the Los Angeles County Code, relating to the compensation of employees ordered into active military service.

The Board of Supervisors of the County of Los Angeles ordains as follows:

**SECTION 1.** Section 5.20.080 is hereby amended to read as follows:

**5.20.080 County contributions for health insurance premiums pursuant to Government Code Section 31691.**

...

C. Retiree health insurance benefits for military reservists.

1. Any employee of the County designated in subparagraph 3 below who is a member of the California National Guard or a United States military reserve organization (reservist) who has completed less than ten years of County service and who retires, or dies, after the effective date of this subsection under circumstances set out in said subparagraph 2 shall, regardless of such person's actual length of County service, be deemed to have completed ten years of County retirement service credit solely for the purposes of calculating the amount of retiree health insurance premiums paid by the County on behalf of such person, or such person's eligible survivors, in accordance with California Government Code Section 31691, County Code Section 5.20.080, and the Funding Agreement between the County and the Los Angeles County Employees Retirement Association (LACERA), dated April 20, 1982, and any amendments thereto.

2. The provisions of this subsection C shall apply to any reservist who is:

A. Called into Active Military Service, as defined in Section 6.20.080 of this Code, and allowed a military leave of absence;

B. A member of any of the contributory retirement plans established for general or safety members of LACERA; and

C. Permanently incapacitated for the performance of duty with his or her employing County department or district, or killed, as a direct consequence and result of injury or disease arising out of and in the course of said active military service.

3. This subsection C shall not create a vested right with respect to any employee prior to the employee's retirement or death. The Board of Supervisors may repeal or amend the provisions of this subsection C, in whole or in part, at any time except to the extent such action would affect an employee who is retired or deceased at the time of such repeal or amendment.

...

**SECTION 2.** Section 5.27.420 is hereby amended to read as follows:

**5.27.420 Exclusions and limitations.**

Benefits provided for under this STD Plan shall not be paid for any Disability not supported by prevailing medical evidence and treatment. In addition, benefits shall not be paid for any Disability resulting from or as a consequence of one or more of the following:

- A. Intentionally self-inflicted injuries;
- B. Participation in the commission of a felony;
- C. War or an act of war, declared or undeclared, unless said Disability is a direct consequence and result of injury or disease arising out of and in the course of active military service during a military leave of absence, in which case, the provisions of this subparagraph C shall not apply;

...

**SECTION 3.** Section 5.27.470 is hereby amended to read as follows:

**5.27.470 Claims.**

...

C. Evidence of Disability. Written medical certification of Total Disability must be submitted by a Physician, practicing within the scope of his license, to the County within 90 days after an application for benefits has been filed. Failure to furnish Evidence of Disability within the time required will not invalidate or reduce any claim if it was not reasonably possible to give such evidence within such time; provided that the Evidence of Disability is furnished as soon as reasonably possible. However, ~~in the event the required Evidence of Disability is not furnished within one year from the first day of absence due to Total Disability,~~ no benefits shall be payable under this LTD Plan in the event the required Evidence of Disability is not furnished within:

1. One year from the first day of absence due to Total Disability; or
2. In the case of an individual claiming a disability as a consequence of active military service during a military leave of absence, within such longer period as may be authorized by the Chief Executive Officer. For purposes of this subsection C,

“active military service” shall mean Active Military Service as defined in Section 6.20.080 of this Code.

...

**SECTION 4.** Section 5.27.480 is hereby amended to read as follows:

**5.27.480 Exclusions and limitations.**

The benefits provided for under this LTD Plan shall not be paid for any:

- A. Total Disability not supported by prevailing medical evidence and treatment;
- B. Total Disability resulting from or as a consequence of any one or more of the following:
  - 1. Intentionally self-inflicted injuries,
  - 2. Participation in the commission of a felony,
  - 3. War or an act of war, declared or undeclared, unless said Disability is a direct consequence and result of injury or disease arising out of and in the course of active military service during a military leave of absence, in which case, the provisions of this subparagraph 3 shall not apply,

...

**SECTION 5.** Section 5.27.510 is hereby amended to read as follows:

**5.27.510 Survivor income benefits.**

...

E. Exclusions and Limitations. The benefits provided under the Survivor Income Benefit (SIB) Plan shall not be payable for any one or more of the following:

- 1. Death resulting from intentionally self-inflicted injuries;

2. Death resulting from participation in a felony;
3. Death resulting from war or an act of war, declared or undeclared;

unless said death is a direct consequence and result of injury or disease arising out of and in the course of active military service during a military leave of absence, in which case, the provisions of this subparagraph 3 shall not apply; or

...

**SECTION 6.** Section 5.28.420 is hereby amended to read as follows:

**5.28.420 Exclusions and limitations.**

Benefits provided for under this STD Plan shall not be paid for any Disability not supported by prevailing medical evidence and treatment. In addition, benefits shall not be paid for any Disability resulting from or as a consequence of one or more of the following:

- A. Intentionally self-inflicted injuries;
- B. Participation in the commission of a felony;
- C. War or an act of war, declared or undeclared, unless said Disability is a direct consequence and result of injury or disease arising out of and in the course of active military service during a military leave of absence, in which case, the provisions of this subparagraph C shall not apply;

...

**SECTION 7.** Section 5.28.470 is hereby amended to read as follows:

**5.28.470 Claims.**

...

C. Evidence of Disability. Written medical certification of Total Disability must be submitted by a Physician, practicing within the scope of his license, to the County within 90 days after an application for benefits has been filed. Failure to furnish Evidence of Disability within the time required will not invalidate or reduce any claim if it was not reasonably possible to give such evidence within such time; provided that the Evidence of Disability is furnished as soon as reasonably possible. However, ~~in the event the required Evidence of Disability is not furnished within one year from the first day of absence due to Total Disability,~~ no benefits shall be payable under this LTD Plan in the event the required Evidence of Disability is not furnished within:

1. One year from the first day of absence due to Total Disability; or
2. In the case of an individual claiming a disability as a consequence of active military service during a military leave of absence, within such longer period as may be authorized by the Chief Executive Officer. For purposes of this subsection C, "active military service" shall mean Active Military Service as defined in Section 6.20.080 of this Code.

...

**SECTION 8.** Section 5.28.480 is hereby amended to read as follows:

**5.28.480 Exclusions and limitations.**

The benefits provided for under this LTD Plan shall not be paid for any:

A. Total Disability not supported by prevailing medical evidence and treatment;

B. Total Disability resulting from or as a consequence of any one or more of the following:

1. Intentionally self-inflicted injuries,
2. Participation in the commission of a felony,
3. War or an act of war, declared or undeclared, unless said Disability

is a direct consequence and result of injury or disease arising out of and in the course of active military service during a military leave of absence, in which case, the provisions of this subparagraph 3 shall not apply,

...

**SECTION 9.** Section 5.28.510 is hereby amended to read as follows:

**5.28.510 Survivor income benefits.**

...

E. Exclusions and Limitations. The benefits provided under the SIB Plan shall not be payable for any one or more of the following:

1. Death resulting from intentionally self-inflicted injuries;
2. Death resulting from participation in a felony;
3. Death resulting from war or an act of war, declared or undeclared,

unless said death is a direct consequence and result of injury or disease arising out of and in the course of active military service during a military leave of absence, in which case, the provisions of this subparagraph 3 shall not apply; or

...

**SECTION 10.** Section 5.38.010 is hereby amended to read as follows:

**5.38.010 Definitions.**

...

F. "Eligible employee" means an employee who becomes totally disabled:

1. As a direct consequence and result of injury or disease arising out of and in the course of the performance of his or her assigned duties; or

2. As a direct consequence and result of injury or disease arising out of and in the course of active military service during a military leave of absence; or

23. After five years of continuous service with the county.

...

**SECTION 11.** Section 5.38.030 is hereby amended to read as follows:

**5.38.030 Claims.**

...

C. Proof of Disability. Written proof covering the occurrence, the character, and the extent of disability must be furnished to the county within 90 days after an application for benefits has been filed. Failure to furnish proof within the time required will not invalidate or reduce any claim if it was not reasonably possible to give proof within such time; provided, that proof is furnished as soon as reasonably possible.

However, ~~in the event the required Evidence of Disability is not furnished within one year from the first day of absence due to Total Disability,~~ no benefits shall be payable under this Plan in the event the required Evidence of Disability is not furnished within:

1. One year from the first day of absence due to Total Disability; or

2. In the case of an individual claiming a disability as a consequence of active military service during a military leave of absence, within such longer period as may be authorized by the Chief Executive Officer. For purposes of this subsection C, "active military service" shall mean Active Military Service as defined in Section 6.20.080 of this Code.

...

**SECTION 12.** Section 5.38.040 is hereby amended to read as follows:

**5.38.040 Survivor benefits.**

A. 1. Upon the death of:

a. An employee either:

i. As a direct consequence and result of injury or disease arising out of and in the course of the performance of his or her assigned duties, or

ii. As a direct consequence and result of injury or disease arising out of and in the course of active military service during a military leave of absence, or

iii. After five years of continuous service with the County,  
or

b. A disability beneficiary;

...

**SECTION 13.** Section 5.38.050 is hereby amended to read as follows:

**5.38.050 Exclusions.**

Types of Exclusions. The benefits provided for under this Plan shall not be payable for any:

- A. Total disability not justified by prevailing medical evidence and treatment.
- B. Disability or death resulting from or contributed to, by any one or more of the following:

- 1. Intentionally self-inflicted injuries,
- 2. Participation in or consequences of having participated in the commission of a felony,
- 3. War or any act of war, declared or undeclared, unless said Disability or death is a direct consequence and result of injury or disease arising out of and in the course of active military service during a military leave of absence, in which case, the provisions of this subparagraph 3 shall not apply,

...

**SECTION 14.** Section 6.20.080 is hereby amended to read as follows:

**6.20.080 Other leaves of absence.**

...

- C. Military Leave.
  - 1. Any employee shall be allowed a military leave of absence with pay in accordance with the applicable provisions of law, including, but not limited to, those contained in the County Charter, and the California Military and Veterans Code, and the Federal Uniformed Service Employment and Reemployment Rights Act of 1994.

2. Definitions. The following terms when used within this section with initial capital letters, unless the context clearly indicates otherwise, shall have the following respective meanings:

a. "Active Military Service" means full-time active duty within a branch of the United States armed forces.

b. "Regular County Pay" means the compensation an employee would have otherwise received from the County during a period of Active Military Service if the employee had remained continuously at work during said period. Regular County Pay shall include an employee's base rate of pay plus any other compensation provided by this Code or by memorandum of understanding approved by the Board of Supervisors for the position and assignment the employee would have held with reasonable certainty if not for absence due to Active Military Service. Regular County Pay shall not include overtime pay unless such pay is for regular recurring overtime work incorporated into an employee's regular work schedule for at least 60 days immediately prior to the commencement of Active Military Service. Regular recurring overtime work for this purpose may include overtime work on a second County position if such second position was held by the employee on a continuous basis for a period of at least 60 days immediately prior to the commencement of Active Military Service. The Chief Executive Officer shall issue all necessary instructions and administrative guidance relating to the determination and calculation of Regular County Pay.

c. "Military Pay" means the sum of an employee's estimated basic military pay and estimated basic allowance for housing unless the employee, at his or her initiative, provides proof that the sum of his or her actual basic military pay and actual basic allowance for housing is lower than the estimated sum, in which case, Military Pay shall be the sum of the actual amounts. All estimates of military pay shall be prepared in accordance with the instructions issued by the Chief Executive Officer. Proof of actual military pay amounts, where applicable, shall take the form of military pay records or such other information as may be determined appropriate by the Chief Executive Officer.

3. Except as provided in subsection 4 of this section, any employee who, as a member of the California National Guard or a United States military reserve organization, is called into Active Military Service, shall be allowed a military leave of absence for a period not to exceed 720 days at his or her Regular County Pay offset by the Military Pay received for such military service. If such employee is entitled to receive benefits pursuant to Section 395.01 or 395.02 of the California Military and Veteran's Code, the provisions of this section shall be in addition to and shall follow the termination of those benefits.

4. Notwithstanding subsection 3 of this section, the 720-day limit provided for in said subsection may be suspended by specific action of the Board of Supervisors for such period or periods specifically designated by the Board of Supervisors.

5. In addition to the compensation provided by Sections 395.01 and 395.02 of the California Military and Veteran's Code, any employee who is on a continuous military leave of one year or more shall, commencing with the second continuous year of such leave, be entitled to up to 30 days per year of paid military leave calculated in the manner otherwise authorized by said sections. Compensation provided by this subsection 5 shall be calculated at the Regular County Pay rate with no reduction or offset for Military Pay and shall be in lieu of the compensation otherwise provided by this Section 6.20.080C for the same period of leave.

6. Any period during which an individual receives paid military leave pursuant to this Section 6.20.080C shall be deemed a period of "active service" within the meaning of Section 6.04.010 of this Code.

7. Any individual who receives paid military leave pursuant to this Section 6.20.080 who does not return to County service within the timeframe set forth within the Uniformed Service Employment and Reemployment Rights Act of 1994, unless said individual is unable to return due to disability or death, shall have that compensation deemed a loan payable with interest at the rate not to exceed 50 basis points higher than that earned by the County Treasury Pool as of the quarter repayment begins.

...

~~J. Yugoslavia.~~

~~1. Subject to the provisions of subsection J2 of this section, any employee who, as a member of the California National Guard or a United States Military reserve organization, is involuntarily called into active duty as a result of the crisis in~~

~~Yugoslavia and is allowed military leave, shall be entitled to receive, for a period not to exceed 360 days, his/her regular pay offset by the military pay received for such duty. If such employee is entitled to receive benefits pursuant to Section 395.01 or 395.02 of the Military and Veteran's Code, the provision of this section shall be in addition to and shall follow the termination of those benefits.~~

~~2. Any individual who receives compensation pursuant to subsection J1 of this section who does not return to county service within 60 days of being released from active duty, unless said individual is unable to return due to disability, shall have that compensation deemed a loan payable with interest at the rate not to exceed 50 basis points higher than that earned by the County Treasury Pool as of the quarter repayment begins.~~

~~3. The provisions of this subsection shall not apply to any active duty served voluntarily.~~

~~K. War on Terrorism.~~

~~1. Subject to the provisions of subsection K2 of this section, any employee who, as a member of the California National Guard or a United States Military reserve organization, is called into active duty as a result of the War on Terrorism and is allowed military leave, shall be entitled to receive, for a period not to exceed 720 days, his/her regular pay offset by the military pay received for such duty. If such employee is entitled to receive benefits pursuant to Section 395.01 or 395.02 of the Military and Veteran's Code, the provision of this section shall be in addition to and shall follow the termination of those benefits.~~

~~2. Any individual who receives compensation pursuant to subsection K1 of this section who does not return to county service within 60 days of being released from active duty, unless said individual is unable to return due to disability, shall have that compensation deemed a loan payable with interest at the rate not to exceed 50 basis points higher than that earned by the County Treasury Pool as of the quarter repayment begins.~~

~~3. The provisions of this subsection shall not apply to any active duty served voluntarily after the close of the War on Terrorism.~~

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**SECTION 15.** Pursuant to Government Code 25123(f), this Ordinance shall take effect immediately upon passage.

[520080LSCEO]